IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22064 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRASING ANGADSINH RAJPUT - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 31/01/2006

ORAL JUDGMENT

1. The petitioner has filed habeas corpus petition under Article 226 of the Constitution of India challenging the detention ordr dated 17.10.05 passed by

the detaining authority under prohibition of Gujarat Prevenion of Anti -social Activities Act 1985 (herein after referred to as the Act), detaining the petitioner as being illegal, invalid, arbitrary, void ab initio suffers from total non application of mind and also in violation of provision of Articles 14, 19, 21 and 22 of the Constitution of India and in violation of provisions of the Act. The petition was filed on 27.10.05 and this Court has issued Rule returnable within 4 weeks. In view of the same the matter is placed for final hearing before this Court so with the consent of the parties the matter is taken up for final hearing.

2. On behalf of the respondent Mr. Pujari learned APP appears. Mr. Prajapati learned advocate for the petitioner has invited my attention to the order dated 17.10.05 passed by the detaining authority under PASA Act. He has further invited my attention in another order dated 17.10.05 by which the petitioner has been sent to Bharuch Jail. The learned advocate for the petitioner has relied upon the ground supplied by the authority to the petitioner in this behalf. There is only one solitary ground by which the petitioner has committed offence under jurisdiction of

Sardarnagar police station . It has been stated that he has stored bottle of Indian made foreign liquor valued at 5800/-, one authorickshaw valued at Rs 15000, one scooter valued at Rs 20000, two mobile phone valued at Rs. 1500/-. It has been stated that Indian made foreign liquor is injurious to health and it is a bootlegger within the meaning of section 2b of the Act.

3. Learned counsel for the petitioner stated that even if this incident is taken on record there will not be any breach of public order and subjective satisfaction arrived at by the authority is vitiated. In support of the same the learned advocate relied upon the judgement of **Piyush Kantilal V. Commissioner of Police , Ahmedabad city & another AIR 1989 SC 491** and **Ashok Jivraj @ Jivabhai Solanki Vs Police Commissioner , Surat & Ors reported in 2000 (1) GLH 393** . and also **Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu & Others reported in AIR 2003 SC 971.** On behalf of the respondent Mr. Pujari has relied upon the grounds stated therein and he has also relied upon Mr. K.R Kaushik Commissioner of Police has stated the authority has carefuly examined the documents

relating to the case registered against the detenu and from those materials , it is clear that the detenu falls within the definition of “boot-legger” as defined under section 2 (b) of the PASA Act. After applying to the facts of the case, came to the conclusion that the detenu is dealing in illegal liquor business and he is disturbing the public order public peace and public health and it is likely that continuance of his anti social and boot legging activities may caue grave or widespread danger to like, property and public health.

2. Having heard learned counsel for the parties and perused the record, in my opinion, the detaining authority has passed the order of detention without there being any credible or cogent material about the detenu preferring bail application or his likelihood of getting enlarged on bail and subsequently continuing and indulging into such prejudicial, anti social and criminal activities again.

3. In view of the single incident the subjective satisfaction arrived by the authority is vitiated. The matter is covered by the judgement of Piyush

Kantilal (supra) and Darpan kumar and the Division Bench Judgement.

4. In view of the same the order of detention is quashed and set aside and the matter is covered by the three judgement in this behalf.

5. I have gone through the said judgements and orders and I am of the view that petition is allowed. The order of detention dated 17.10.05 is quashed and set aside. The detenu, Shri Mahendrasing Angadsinh Rajput is ordered to be set at liberty forthwith if she is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost.

6. Direct service is permitted.

(K.M.MEHTA, J)

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